

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FERNANDO NAVARRO HERNANDEZ,)
)
 Petitioner,)
)
 vs.)
)
 RENEE BAKER, *et al.*,)
)
 Respondents.)
)
 _____/

3:09-cv-0545-LRH-WGC

ORDER

This capital habeas corpus action was stayed on May 21, 2010 (ECF No. 71), pending the petitioner's exhaustion of claims in state court.

On January 22, 2015, the petitioner, Fernando Navarro Hernandez, filed a motion to lift the stay (ECF No. 92). In that motion, Hernandez states that the state-court proceedings have concluded. Respondents filed a response to Hernandez' motion on February 3, 2015 (ECF No. 93), indicating that they do not oppose the lifting of the stay. There was no reply. The court will grant Hernandez' motion to lift the stay. The court will also set a schedule for further litigation of this action

IT IS THEREFORE ORDERED that petitioner's Motion to Vacate Stay and Reopen Capital Habeas Corpus Proceeding (ECF No. 92) is **GRANTED**. The stay of this action is vacated.

///

///

///

1 **IT IS FURTHER ORDERED** that the following schedule shall govern the further litigation
2 of this action:

3 1. **Amended Petition.** If necessary, petitioner shall file and serve a third amended
4 petition for writ of habeas corpus within **60 days** after entry of this order. The third amended
5 petition shall specifically state whether each ground for relief has been exhausted in state court; for
6 each claim that has been exhausted in state court, the third amended petition shall state how, when,
7 and where that occurred. If petitioner determines that a third amended petition need not be filed,
8 then, within 60 days after entry of this order, petitioner shall file and serve a statement to that effect.

9 2. **Response to Petition.** Respondents shall have **60 days** following service of the third
10 amended petition to file and serve an answer or other response to the third amended petition. If
11 petitioner does not file a third amended petition, respondents shall have **60 days** following the due-
12 date for the third amended petition to file and serve an answer or other response to petitioner's
13 second amended petition.

14 3. **Reply and Response to Reply.** Petitioner shall have **45 days** following service of
15 an answer to file and serve a reply. Respondents shall thereafter have **30 days** following service of a
16 reply to file and serve a response to the reply.


17 4. **Briefing of Motion to Dismiss.** If respondents file a motion to dismiss, petitioner
18 shall have **60 days** following service of the motion to file and serve a response to the motion.
19 Respondents shall thereafter have **30 days** following service of the response to file and serve a reply.

20 5. **Discovery.** If petitioner wishes to move for leave to conduct discovery, petitioner
21 shall file and serve such motion concurrently with, but separate from, the response to respondents'
22 motion to dismiss or the reply to respondents' answer. Any motion for leave to conduct discovery
23 filed by petitioner before that time may be considered premature, and may be denied, without
24 prejudice, on that basis. Respondents shall file and serve a response to any such motion concurrently
25 with, but separate from, their reply in support of their motion to dismiss or their response to
26 petitioner's reply. Thereafter, petitioner shall have 20 days to file and serve a reply in support of the

1 motion for leave to conduct discovery.

2 6. **Evidentiary Hearing.** If petitioner wishes to request an evidentiary hearing,
3 petitioner shall file and serve a motion for an evidentiary hearing concurrently with, but separate
4 from, the response to respondents' motion to dismiss or the reply to respondents' answer. Any
5 motion for an evidentiary hearing filed by petitioner before that time may be considered premature,
6 and may be denied, without prejudice, on that basis. The motion for an evidentiary hearing must
7 specifically address why an evidentiary hearing is required, and must meet the requirements of
8 28 U.S.C. § 2254(e). The motion must state whether an evidentiary hearing was held in state court,
9 and, if so, state where the transcript is located in the record. If petitioner files a motion for an
10 evidentiary hearing, respondents shall file and serve a response to that motion concurrently with, but
11 separate from, their reply in support of their motion to dismiss or their response to petitioner's reply.
12 Thereafter, petitioner shall have 20 days to file and serve a reply in support of the motion for an
13 evidentiary hearing.

14
15 Dated this 20th day of February, 2015.

16 
17 LARRY R. HICKS
18 UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26